THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23624 OF 2005

DATED:3.11.2005

Between:

Mohd. Abdul Rasheed

…Petitioner

And

The Commissioner, Municipal Corporation of Hyderabad

Hyderabad and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23624 OF 2005

ORDER:

The petitioner is a tenant of the shop bearing No.1-11-94, situated at Shyamlal Building, Begumpet, Hyderabad. It is alleged that the officials of the Municipal Corporation of Hyderabad (MCH) with the instigation of the landlord of the shop are taking steps to evict the petitioner and handover possession the property to MCH for widening the road. The petitioner states that the respondents have not served any letter/notice asking him to give consent. He states that any such action on the part of MCH without due process of law under the Hyderabad Municipal Corporation Act, 1955 (for short, the Act) or the Land Acquisition Act, 1894 (for short, the LA Act), would be illegal.

Municipal Corporation of Hyderabad (MCH) has to sought consent of the petitioner tenant for advance possession in larger public interest. It does not, however, mean that in the event of tenant of the property not willing to give consent, the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Act. In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.
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> In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

In the affidavit it is stated by the petitioner that he was not given any letter or notice asking his consent to handover possession, but the officials of the respondents orally asked him to vacate the premises. Therefore, initially, MCH has to issue letter asking consent of petitioner for giving advance possession of the property. Learned Standing Counsel for MCH submits that if the petitioner tenant is not agreed under private negotiations, land acquisition proposals will be taken up as per the Land Acquisition Act, 1894 (LA Act). If the petitioner is not given his consent, it is always open to MCH to initiate action under Section 147 of the Act and acquire the property in possession of the petitioner. In response to the letter to be issued by MCH if the petitioner is not given his willingness/consent to cooperate with the MCH for the road widening project, needless to mention that Corporation has to initiate action under the provisions of LA Act. Till then, the petitioner cannot be deprived of his right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The Writ Petition with the above observations is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

3.11.2005

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